

In re Patent Application of:
WESTPHAL
Serial No. 09/787,290
Filed: MARCH 15, 2001

REMARKS

Claims 1-12 remain in the application. Claims 1-12 stand rejected.

In the office action of June 4, 2004, the Examiner required an abstract on a separate sheet of drawings notwithstanding the abstract was part of the original PCT application and was found at section 57 of the published application. Applicants complied with that requirement in the response dated November 3, 2004. In paragraph 2 of the final rejection, the Examiner objected to the content of the abstract in that the "origin of the numerical notation (13B) was unclear." The abstract has been amended to remove the reference to the parenthetical. The abstract as now amended clearly describes the invention.

In the office action of June 4, 2004, the Examiner objected to the citation of certain literature references in that they "may be improper because they appear essential to the claimed invention, especially claim 4." Applicant traversed that requirement because there was no showing that anything in those references was essential to the claimed invention. The Examiner had not identified any claim limitation to which those articles could be considered "essential."

In paragraph 3 of the final rejection, the Examiner responds:

"Applicant's are thanked for addressing this issue. The reasoning

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behind the objection is since references are specific (i.e., citing pages relative to the written description) to the content of the invention, they are consider prior art regardless if the information is directly or indirectly related to the claims, otherwise one would question their purpose. Objection stands."

It is not at all clear from the Examiner's paragraph 3 what the nature of the objection to the specification is. There is no objection that applicants can treat. It is not clear what the Examiner wants applicant to do to overcome whatever the objection is. Accordingly, paragraph 3 of the Examiner's action fails to state a requirement to which applicant can respond and should be withdrawn.

In the office action of June 4, 2004, in paragraphs 8 and 9 of that particular action, the Examiner objected to certain informalities in the language of claim 4 and rejected claim 4 as indefinite for certain informalities of language. Applicants corrected all but two of those informalities. Applicant would have corrected all of the informalities except that the language that the Examiner objected to was not found in claim 4 nor in any of the other claims. Therefor applicant was unable to respond.

In paragraph 5 of the final rejection the Examiner states:

"Applicants are thanked for addressing this issue. Applicant, by admission, wasn't able to respond, therefore the objection stands."

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Again, applicants are unable to respond to this rejection because the language objected to simply doesn't exist. For the Examiner to state that because applicant was not able to respond to an objection that didn't exist "the objection stands" is a *non sequitur*. Accordingly, applicants request that the Examiner reconsider and withdraw the Examiner's objection to non-existent language.

A Notice of Appeal has been filed with respect the rejection on the merits of all of the claims remaining in the application.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 01-0484 and please credit any excess fees to such deposit account.

Respectfully submitted,



DAVID L. STEWART
Reg. No. 37,579
Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
Post Office Box 3791
Orlando, Florida 32802
407-841-2330

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP AMENDMENT, COMMISSIONER OF PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, on this 27 day of June, 2005.

A handwritten signature in black ink, appearing to read "Kristen J. Segura", is written over a horizontal line.